

Case Summary

Gregory Easter appeals his convictions for Class A felony possession of cocaine, Class C felony possession of cocaine with a firearm, and Class A felony dealing cocaine. We affirm.

Issue

We address one issue, which we restate as whether the State presented sufficient evidence to support Easter's convictions.

Facts

On February 23, 2007, a search warrant was executed at 4031 Essex Court in Indianapolis. Three individuals were found inside the residence: Easter, Linda Patterson, and Dwayne Gross. Easter was located in a second floor bedroom lying on a mattress. He was immediately detained and a search of the bedroom yielded a bag of cocaine hidden under the carpet and a .22 caliber handgun beneath the mattress. A search of the rest of the residence uncovered an additional firearm and two digital scales. Thereafter, Easter was charged with class A felony possession of cocaine, class C possession of cocaine with a firearm, and class A felony dealing cocaine. Following a jury trial, Easter was convicted as charged. He now appeals.

Analysis

Easter contends that there is insufficient evidence to support his conviction. In reviewing sufficiency claims, we will neither reweigh the evidence nor judge the credibility of witnesses. Baxter v. State, 891 N.E.2d 110, 120 (Ind. Ct. App. 2008). Instead, we must consider only the probative evidence and reasonable inferences in a light most favorable to the verdict. Id. We must affirm a conviction unless no reasonable trier-of-fact could have found the elements of the crime proven beyond a reasonable doubt. Id.

In order to convict Easter of Class A felony possession of cocaine as charged in this case, the State was required to demonstrate that he knowingly or intentionally possessed three grams or more of cocaine within one-thousand feet of a family housing complex. See Ind. Code § 35-48-4-6(b)(3)(B)(iii). Likewise, in order to convict Easter of Class C possession of cocaine with a firearm, the State was required to demonstrate that he knowingly or intentionally possessed three grams or more of cocaine while in possession of a firearm. See I.C. § 35-48-4-6(b)(1)(B). Finally, in order to convict Easter of Class A felony dealing cocaine as charged in this case, the State was required to prove that he knowingly or intentionally possessed three grams or more of cocaine with the intent to deliver. See I.C. § 35-48-4-1(b)(1).

A. Constructive Possession

Easter first argues that there is insufficient evidence to support a conviction for possession of the handgun and cocaine. A conviction for possession of contraband may rest upon either actual or constructive possession. Goodner v. State, 685 N.E.2d 1058,

1061 (Ind. 1997). Constructive possession is established upon showing the defendant had: 1) the intent to maintain dominion and control over the contraband; and 2) the capability to maintain dominion and control over the contraband. Goliday v. State, 708 N.E.2d 4, 6 (Ind. 1999). To prove the first element, the State must establish the defendant had knowledge of the presence of the contraband. This knowledge may be established by exclusive dominion and control over the premises containing the contraband; or when control over the premises is non-exclusive, evidence of additional circumstances. Id. Circumstances that will support such an inference include: 1) incriminating statements made by the defendant; 2) attempted flight or furtive gestures; 3) a drug manufacturing setting; 4) proximity of the defendant to the contraband; 5) contraband in plain view; and 6) the mingling of the contraband with items owned by the defendant. Person v. State, 661 N.E.2d 587, 590 (Ind. Ct. App. 1996). To establish the second element of constructive possession, the evidence must demonstrate the defendant's capability to "reduce the item to his personal possession or to otherwise direct its disposition or use." In the Matter of J.L., 599 N.E.2d 208, 212 (Ind. Ct. App. 1992), trans. denied.

In the instant case, possession over the premises in which the contraband was found was non-exclusive. Therefore, we must examine the evidence in a light most favorable to the conviction to determine whether there was at least one additional circumstance permitting the conclusion that Easter constructively possessed the firearm and cocaine. We find that the jury's conclusion was properly drawn.

The firearm was discovered underneath the mattress upon which Easter was lying when apprehended. In the very same room, cocaine was found hidden beneath a section of the carpet that was detached from the floor. Patterson testified that on average, Easter slept in the room three nights per week. Tr. at 95. Given his proximity to the contraband, Easter was more than capable of reducing the firearm and cocaine to his personal possession at a moment's notice. Although Easter contends that his proximity alone is insufficient to establish constructive possession, he directs us to no precedent that would prevent a fact-finder from drawing such an inference. We therefore decline his invitation to re-weigh the evidence.

The evidence was sufficient to support the jury's judgment that Easter had the intent and capability to maintain dominion and control over the handgun and cocaine.

B. Possession With the Intent to Deliver

Easter also contends that there was insufficient evidence to establish his intent to deliver the cocaine. Intent, being a mental state, is established through inferences drawn from a defendant's behavior, as well as surrounding circumstances. Richardson v. State, 856 N.E.2d 1222, 1227 (Ind. Ct. App. 2006). "Evidence of the illegal possession of a relatively large quantity of drugs is sufficient to sustain a conviction for possession with intent to deliver." Hazzard v. State, 642 N.E.2d 1368, 1369-70 (Ind. Ct. App. 1994). At trial, the jury learned that Easter was found in possession of 5.67 grams of cocaine. According to expert testimony, this is a quantity much larger than would typically be possessed for personal use. Tr. pp. 75-76. In addition, despite being unemployed, \$1,777

in mostly small bills was found on Easter's person. Moreover, a search of the residence yielded two digital scales and an additional firearm. Based on this evidence, we find that a reasonable trier of fact could conclude that Easter intended to deliver the cocaine.

Conclusion

There was sufficient evidence to convict Easter of Class A felony possession of cocaine, Class C felony possession of cocaine with a firearm, and Class A felony dealing cocaine. We affirm.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.